

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

MELISSA VANDERGRIFF, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:14-cv-177-SKL
)	
)	
RED ROBIN INTERNATIONAL, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

ORDER TO SHOW CAUSE OR APPEAR FOR DEPOSITION

Before the Court is the joint motion of Plaintiffs and Defendants for an order to compel a non-party witness, Madison Fernandez (“Ms. Fernandez”), to appear for a deposition or to show cause why she should not be held in contempt pursuant to Fed. R. Civ. P. 45 [Doc. 22]. The parties have filed a copy of the subpoena that was served on Ms. Fernandez, which required her to attend and testify at a deposition on October 21, 2015, at the law firm of Patrick, Beard, Schulman & Jacoway, P.C. [Doc. 22-1 at Page ID # 87]. Ms. Fernandez failed to attend the deposition, but she called Defendants’ counsel, Sean Martin (“Attorney Martin”), on October 22, 2015, and agreed to testify at a deposition on November 12, 2015 [Doc. 22 at Page ID # 85]. Attorney Martin sent Ms. Fernandez a letter confirming that her deposition would take place on November 12, 2015 [Doc. 22-2]. The parties state that Ms. Fernandez again failed to appear for her rescheduled deposition on November 12, 2015 [Doc. 22 at Page ID # 85].

Federal Rule of Civil Procedure 45 governs the procedure regarding subpoenas that issue

from this Court, and such subpoenas may command a person to appear for a deposition. Rule 45 provides certain protections for persons subject to a subpoena, and it explains a person's duties in responding to a subpoena. Fed. R. Civ. P. 45 (c), (d), & (e). Persons subject to a properly issued subpoena are expected to comply with the terms of the subpoena, unless the Court quashes or modifies the subpoena in response to a timely filed motion. Fed. R. Civ. P. 45(d)(3). Under Rule 45(g), a person's failure, without adequate excuse, to obey a subpoena served upon that person may be deemed contempt of the Court.

The parties' joint motion [Doc. 22] is **GRANTED IN PART as follows**. The Court hereby **COMPELS** Ms. Fernandez to appear for a hearing to determine whether she should be compelled to comply with the subpoena and/or held in contempt and sanctioned for her failure to do so. Said hearing shall take place on **Tuesday, January 26, 2016, at 10:00 a.m. [EASTERN]** in Courtroom 4 of the Joel W. Solomon Federal Building & United States Courthouse at 900 Georgia Avenue, Chattanooga, TN 37402 unless Ms. Fernandez has appeared for and testified at her deposition.

The Court further **ORDERS** that in lieu of appearing at the scheduled show cause hearing and to avoid the possibility of being held in contempt, Ms. Fernandez may appear and testify at a deposition on **Friday, January 22, 2016, at 9:00 a.m. [EASTERN]** at Patrick, Beard, Schulman & Jacoway, P.C., Suite 202, Market Court Bldg., 537 Market Street, Chattanooga, TN 37402. If Ms. Fernandez is unable to appear for the deposition on January 22, 2016, she may make arrangements with the parties' attorneys to reschedule the deposition for a mutually agreeable date **prior** to the hearing. In the event Ms. Fernandez submits to the deposition prior to the show cause hearing, the parties **SHALL** timely notify the undersigned and the hearing will be cancelled.

Further, pursuant to Fed. R Civ. P. 4.1(a), the Court specially appoints Attorney Martin to

timely serve this Order upon Ms. Fernandez and to make proof of service as provided in Rule 4(1).

Ms. Fernandez is FOREWARNED that any failure to fully comply with this Order could result in a finding of contempt and other sanctions against Ms. Fernandez.

SO ORDERED.

ENTER:

s/ Susan K. Lee

SUSAN K. LEE
UNITED STATES MAGISTRATE JUDGE